THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.17133 of 2006

18.8.2006

Between:

Mohd. Afzal Miya, S/o.Late Shaik Khasim

… Petitioner

AND

The Joint Collector, Khammam District
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.17133 of 2006

ORDER:

An extent of land admeasuring Acs.3.24 guntas in survey No.54 of Singareni Village in Khammam District was assigned to one Shaik Imam Saheb by the Tahsildar, Yellandu, vide proceedings dated 15.10.1980. The original assignee alienated the land in favour of Sk.Muneeruddin under a sada sale deed and Sk.Muneeruddin got his name mutated in the pahanies for 1988-1989. Therefore, the Mandal Revenue Officer, Singareni Mandal (MRO), the third respondent herein, initiated action for resumption of the land under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity), and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (the Rules, for brevity). Ultimately, by proceedings dated 04.8.2003, the third respondent ordered resumption of the land to the Government for contravention of the provisions of the Act. In appears, the wife of Shaik Imam Saheb also participated in the enquiry before the MRO.

Aggrieved by the proceedings of the MRO, the wife of the original assignee, Baniyabee, filed an appeal before the Revenue Divisional Officer, Khammam (RDO), presumably claiming restoration of land as legal heir of the original assignee. Her appeal was dismissed on 03.11.2003 holding that she failed to substantiate the ground in support of the appeal. At that stage, the petitioner claiming himself to

be adopted son of Shaik Imam Saheb, filed a revision petition being Case No.E3/ 386/2005, dated 17.6.2006 before the first respondent mainly praying for restoration of the land. The petitioner also claimed that he is the grandson of Shaik Imam Saheb.

In this writ petition, it is contended that the impugned order is vitiated perversely, in that, the Joint Collector, Khammam, misdirected himself in coming to the conclusion that the petitioner is not an adopted son of Shaik Imam Saheb.

A perusal of the impugned order would show that the Joint Collector considered two issues, namely, whether the assigned land purchased by the second respondent is in violation of the provisions of the Act and whether the land can be restored to the petitioner. There is no dispute regarding the first question, as there is no challenge to the same. Regarding the second question, the Joint Collector observed as under.

> Herein this case, since there are no legal heirs to the assignee, the land cannot be restored.
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> The present status of the land as reported by the MRO, Singareni as follows.
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> |---|---|
> | 1. Covered with railway track | Acs.1.14 Gts. |
> | 2. Using for burial ground | Acs.1.00 Gts. |
> | 3. Vacant land | Acs.1.10 Gts. |
> | | --- |
> | | Acs.3.24 Gts |
> | | --- |
>
> The MRO, Singareni vide ref.B/692/05, dated 05.3.2006 reported that Sk.Imam Saheb and his wife died issueless. Herein the Revision Petitioner, who is claiming himself as legal heir to the original assignee himself admitted vide his petition that his grandfather, the original assignee, had adopted them. It is pertinent to mention here that there is no provision for adoption in Muslim Personal Law. It is an established fact that the original assignee Sk.Imam Saheb sold away the assigned land in his lifetime. The claim of revision petitioner is not tenable.

As noticed above, except an extent of Acs.1.10 guntas, the other land is being used for non-agricultural purpose and therefore, it is not reasonably practicable to restore the land to the legal heirs of the assignees as contemplated under Section 4(1)(b) of the Act. Secondly, it appears, Shaik Imam Saheb and his wife-Baniyabee died issueless, but the petitioner claims that Shaik Imam Saheb is his grandfather. If the petitioner is the adopted son, by reason of the

provisions of the Act, he cannot be treated as a legal heir for the purpose of inheriting the assigned land. Therefore, he is disqualified from inheriting the assigned land from Shaik Imam Saheb. In **K.Yesuratnam v Commissioner, (LR)**[1], a learned single Judge of this Court considered the questions whether an adopted son can be treated as member of the family entitled to inherit assigned land and whether a person can escape the rigour of Section 3(2) read with 2(6) of the Act by virtue of a Will. While observing that the Act is a beneficial legislation requiring the interpretation in consonance with the object of the provisions of the Act laid down as under.

> As such, the conditions that the assigned land is heritable but not alienable and that it should be in cultivation of the assignee and his family members, have to be read together and in this context, the definition of the word 'transfer' under Section 3(6) of the Act has to be tested including the exclusion of testamentary disposition from the said work 'transfer'. This exclusion of testamentary disposition from the word 'transfer' under Section 2(6) of the Act is not in general sense and the testamentary disposition is not used or understood as in common parlance. It should be read down and understood in the context of the objects and intendment of the Act, which totally prohibits the induction of strangers to the family of assignee either during his lifetime or thereafter. As such, the words 'testamentary disposition' employed under Section 2(6) of Act, have to be understood that the assignee can execute a Will choosing some of his family members to succeed to the 'assigned' 'lands' excluding one or some among his family members. As such the Will even if it is a testamentary disposition can only be among the family members of the said assignee but not to a stranger.

The decision of the learned Single Judge in **K.Yesuratnam** (supra) was confirmed by the Division Bench of this Court in W.A. No.1208 of 1993 dated 05.2.1996.

For the above reasons, the writ petition is dismissed. No order as to costs.

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(**V.V.S.RAO, J**)

August 18, 2006.

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[1] 1997(6) ALT 829